Brown v. Board of Education
Washington DC, 1954

Cast: (9 student parts)
A Reporter (court staff)
Scene Card holder
Chief Justice Earl Warren
Justice 2
Justice 3
Student to read information about oral arguments
Student to read information about Chief Justice Warren
Student to read information about Plessy v. Ferguson
Student to read information about Justice Harlan
Thurgood Marshall (court staff)
School Board lawyer (court staff)
Bailiff

Reporter: I am standing outside the courtroom of the U. S Supreme Court in Washington DC. To hear oral arguments in the case of Brown v. Board of Education. (to the audience) Do you know what an oral argument is?

Student in the Audience: (reads from card) an oral argument is when the court asks the lawyers involved in the 2 sides of a case to appear in person before the court. The lawyers talk about why their side should win. The Court can then ask them questions about the case.

Reporter: The Supreme Court has decided to combine several cases about the way black and white children were made to go to different schools. These cases come from (nod in the direction of each of the other groups and scene person will hold up the sign as each place is named): Kansas; Delaware, Virginia, and South Carolina. The case is named Brown, because alphabetically it was the first name on the list. Let's go inside, Chief Justice Earl Warren is ready to begin. Do you know who he is?

Student in the Audience: (reads from card) Chief Justice Earl Warren was the Governor of California before being chosen for the office. He was chosen to serve on the Supreme Court by President President Eisenhower. When he joined the Court they had already discussed the case once, but they couldn't reach a decision.

Bailiff: (pound gavel when first judge appears in your sight) All Rise. The Supreme Court is now is session. (wait until judges sit down). You may be seated.

This material was prepared as a part of the Indiana Supreme Court's "Courts in the Classroom" project. For more information and materials concerning the re-enactment of the cases surrounding Brown v. Board of Education, or for other curriculum materials, please contact Elizabeth Osborn, Asst. to the Chief Justice for Court History and Public Education at eosborn@courts.state.in.us or visit our website www.in.gov/judiciary/citc.

Chief Justice Warren: Mr. Marshall, you are here today to challenge the ruling of this Court in the case of Plessy v. Ferguson made in 1896. Is that correct?

Thurgood Marshall: Yes, Your Honor. (to the audience) Do you know about the case of Plessy v. Ferguson?

Student in the Audience: (reads from card) In the case of Plessy v. Ferguson the Supreme Court ruled that it was legal to have separate facilities like schools, busses and water fountains for blacks and whites, as long as the facilities were equal.

Thurgood Marshall: That is correct.

Supreme Court Justice 2: Please tell us, Mr. Marshall, why you think we should throw out the idea of separate but equal.

Thurgood Marshall: In 1896 one of the Justices on the court disagreed strongly with the idea of separate but equal. (to the audience) His name was Justice Harlan. Do you know what Justice Harlan said in this case?

Student in the Audience: (reads from card) Justice Harlan said that "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens."

Thurgood Marshall: I think Mr. Harlan's day has come.

Supreme Court Justice 3: Please explain yourself Mr. Marshall.

Thurgood Marshall:

Your Honor, the segregation of black and white children in public schools is a violation of The Fourteenth Amendment to the United States Constitution. Adopted in 1868, it forbids states from denying individual citizens due process and equal protection under the law. At that time, most states did not sponsor a system of free public education. White children went to private schools. There were no schools for black children to attend. In fact, in some states made it was illegal for black children to receive a formal education. Today this country is very different. Black men and women have shown that with the proper education they can become successful lawyers, doctors, businessmen, engineers and scientist. Separate is inherently unequal. Even if the black schools and white schools have the equal buildings, books, teachers and salaries, the separate schools still do offer equal educational opportunities. To separate children of similar age and intelligence solely because of their race generates a feeling of inferiority as to their status in the community that will affect their hearts and minds in a way that can never be undone. This sense of inferiority affects their motivation to learn and deprives them of the benefits that they would receive in a racially integrated school system. We must protect the rights of both black and white children in this country by ending segregation now.

Supreme Court Justice 2: Mr. Marshall you make some excellent points. Could you please give us some suggestions about how we might go about ending segregation of school children.

Thurgood Marshall:

Your honor, different school systems pose different problems. School boards are capable of creating plans but the court must make sure that the plans work. I suggest that the federal government withhold funding to any and all school boards that fail to desegregate their school system. Schools should have the burden of demonstrating that they are acting in good faith and with deliberate speed. A violation of the United States Constitution is so egregious that it cannot go unchecked. Integration must happen as soon as possible.

Chief Justice Warren: (look at papers and shuffle around) (look at the other attorney table) Gentleman, you are arguing for the Topeka School Board and the State of Kansas?

Appellant Attorneys: We are.

Chief Justice Warren: You may begin.

Appellant Attorney #1: Your Honors, we would like to make clear that despite the manner in which the appellants would characterize our argument, we do not propose to take any position regarding the ethics or morality of segregation. Nor, unlike our opponents, do we believe it is appropriate for the courts to resolve sociological issues. Instead, we argue that the law -- as stated by the Fourteenth Amendment, and the as interpreted by this Court for the last half-century – permits segregation in public schools.

We begin by disputing the claim of the appellants that the Fourteenth Amendment prohibits racial segregation in public schools. The Fourteenth Amendment does not expressly or implicitly guarantee anything more than equality with regards to the fundamental rights of life, liberty and property. This understanding of equality is clearly supported by the history surrounding its ratification that contain many clear statements that no one intended for it to prohibit racial segregation in schools at the time of ratification or at any in the future. We also note that this interpretation of the Fourteenth Amendment has been accepted by this Court since Plessy v. Ferguson and has been adhered to in numerous holdings and rulings throughout the state and federal judiciary.

Appellant Attorney #2: We also argue that this is an issue for the legislators – ideally those of the individual states to whom the power to control their own public schools is reserved – to address, not for the courts to decide. It is not within the province of the judiciary to legislate. However, the appellants are unquestionably asking you to fulfill the role of legislators and determine that segregation is no longer an intelligent course of action for any state. Whether or not that is the case, it is not for this Court, nor any court, to decide since, as has been stated before, "members of the judiciary have no right to read their ideas of sociology into the Constitution." That, under our federal Constitution, is a matter for legislators, and we ask that you respect the rights of states to legislate for the common good of their own citizens.

Finally, if you ultimately agree with the appellants, we believe that the best course of action would be to permit the lower courts – and the local school boards -- to determine the best

means to achieve desegregation. We feel that such local entities would be better able to appreciate the practical situation presented in each school district than this Court, and therefore be better able to create an effective, and orderly, transition into integrated schools.

Chief Justice Warren : The Court thanks counsel for both sides for their presentation today. The Court will soon share with you our decision on this matter.

(Judges huddle together up on the bench)

Chief Justice Warren: Ladies and Gentleman:

> "We conclude unanimously that in the field of public education, the doctrine of separate but equal has no place." We expect school districts across America to end segregation "with all deliberate speed."

Bailiff: All Rise. (audience and judges get up. As judges file out pound gavel). Court is adjourned.